

109TH CONGRESS  
1ST SESSION

# S. 1833

To amend title XIX of the Social Security Act to provide for health opportunity accounts under the Medicaid Program.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2005

Mr. CRAPO introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XIX of the Social Security Act to provide for health opportunity accounts under the Medicaid Program.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicaid Health Op-  
5 portunity Account Act of 2005”.

6 **SEC. 2. HEALTH OPPORTUNITY ACCOUNTS UNDER THE**  
7 **MEDICAID PROGRAM.**

8 Title XIX of the Social Security Act is amended—

9 (1) by redesignating section 1936 as section  
10 1937; and

1           (2) by inserting after section 1935 the following  
2 new section:

3           “HEALTH OPPORTUNITY ACCOUNTS

4           “SEC. 1936. (a) AUTHORITY.—

5           “(1) IN GENERAL.—Notwithstanding any other  
6 provision of this title, the Secretary shall establish a  
7 demonstration program under which States may pro-  
8 vide under their State plans under this title (includ-  
9 ing such a plan operating under a statewide waiver  
10 under section 1115) in accordance with this section  
11 for the provision of alternative benefits consistent  
12 with subsection (c) for eligible population groups in  
13 one or more geographic areas of the State specified  
14 by the State. An amendment under the previous sen-  
15 tence is referred to in this section as a ‘State dem-  
16 onstration program’.

17           “(2) INITIAL DEMONSTRATION.—The dem-  
18 onstration program under this section shall begin on  
19 January 1, 2006. During the first 5 years of such  
20 program, the Secretary shall not approve more than  
21 10 State demonstration programs, with each State  
22 demonstration program covering one or more geo-  
23 graphic areas specified by the State. After such 5-  
24 year period—

25           “(A) unless the Secretary finds, taking  
26 into account cost-effectiveness, quality of care,

1 and other criteria that the Secretary specifies,  
2 that a State demonstration program previously  
3 implemented has been unsuccessful, such a  
4 demonstration program may be extended or  
5 made permanent in the State; and

6 “(B) unless the Secretary finds, taking  
7 into account cost-effectiveness, quality of care,  
8 and other criteria that the Secretary specifies,  
9 that all State demonstration programs pre-  
10 viously implemented were unsuccessful, other  
11 States may implement State demonstration pro-  
12 grams.

13 “(3) APPROVAL.—The Secretary shall not ap-  
14 prove a State demonstration program under para-  
15 graph (1) unless the program incorporates the fol-  
16 lowing:

17 “(A) Creating patient awareness of the  
18 high cost of medical care.

19 “(B) Providing incentives to patients to  
20 seek preventive care services.

21 “(C) Reducing inappropriate use of health  
22 care services.

23 “(D) Enabling patients to take responsi-  
24 bility for health outcomes.

1           “(E) Providing enrollment counselors and  
2           ongoing education activities.

3           “(F) Providing transactions involving  
4           health opportunity accounts to be conducted  
5           electronically and without cash.

6           “(G) Providing access to negotiated pro-  
7           vider payment rates consistent with this section.

8           Nothing in this section shall be construed as pre-  
9           venting a State demonstration program from pro-  
10          viding incentives for patients obtaining appropriate  
11          preventive care (as defined for purposes of section  
12          223(c)(2)(C) of the Internal Revenue Code of 1986),  
13          such as additional account contributions for an indi-  
14          vidual demonstrating healthy prevention practices.

15          “(4)           NO           REQUIREMENT           FOR  
16          STATEWIDENESS.—Nothing in this section or any  
17          other provision of law shall be construed to require  
18          that a State must provide for the implementation of  
19          a State demonstration program on a Statewide  
20          basis.

21          “(5) REPORTS.—The Secretary shall periodi-  
22          cally submit to Congress reports regarding the suc-  
23          cess of State demonstration programs.

24          “(b) ELIGIBLE POPULATION GROUPS.—

1           “(1) IN GENERAL.—A State demonstration pro-  
2           gram under this section shall specify the eligible  
3           population groups consistent with paragraph (2).

4           “(2) ELIGIBILITY LIMITATIONS DURING INITIAL  
5           DEMONSTRATION PERIOD.—During the initial 5  
6           years of the demonstration program under this sec-  
7           tion, a State demonstration project shall not apply  
8           to any of the following individuals:

9                   “(A) Individuals who are 65 years of age  
10                  or older.

11                  “(B) Individuals who are disabled, regard-  
12                  less of whether or not their eligibility for med-  
13                  ical assistance under this title is based on such  
14                  disability.

15                  “(C) Individuals who are eligible for med-  
16                  ical assistance under this title only because they  
17                  are (or were within the previous 60 days) preg-  
18                  nant.

19                  “(D) Individuals who have been eligible for  
20                  medical assistance for a continuous period of  
21                  less than 3 months.

22           “(3) LIMITATIONS.—

23                   “(A) STATE OPTION.—This subsection  
24                  shall not be construed as preventing a State  
25                  from further limiting eligibility to individuals

1 who are likely to be eligible for medical assist-  
2 ance for a period of one year or longer.

3 “(B) ON ENROLLEES IN MEDICAID MAN-  
4 AGED CARE ORGANIZATIONS.—Insofar as the  
5 State provides for eligibility of individuals who  
6 are enrolled in medicaid managed care organi-  
7 zations, such individuals may participate in the  
8 State demonstration project only if the State  
9 provides assurances satisfactory to the Sec-  
10 retary that the following conditions are met  
11 with respect to any such organization:

12 “(i) In no case may the number of  
13 such individuals enrolled in the organiza-  
14 tion who participate in the project exceed  
15 5 percent of the total number of individ-  
16 uals enrolled in such organization.

17 “(ii) The proportion of enrollees in  
18 the organization who so participate is not  
19 significantly disproportionate to the pro-  
20 portion of such enrollees in other such or-  
21 ganizations who participate.

22 “(iii) The State has provided for an  
23 appropriate adjustment in the per capita  
24 payments to the organization to account  
25 for such participation, taking into account

1 differences in the likely use of health serv-  
 2 ices between enrollees who so participate  
 3 and enrollees who do not so participate.

4 “(4) VOLUNTARY PARTICIPATION.—An eligible  
 5 individual shall be enrolled in a State demonstration  
 6 project only if the individual voluntarily enrolls.  
 7 Such an enrollment shall be effective for a period of  
 8 12 months, but may be extended for additional peri-  
 9 ods of 12 months each with the consent of the indi-  
 10 vidual.

11 “(c) ALTERNATIVE BENEFITS.—

12 “(1) IN GENERAL.—The alternative benefits  
 13 provided under this section shall consist, consistent  
 14 with this subsection, of at least—

15 “(A) coverage for medical expenses in a  
 16 year for items and services for which benefits  
 17 are otherwise provided under this title after an  
 18 annual deductible described in paragraph (2)  
 19 has been met; and

20 “(B) contribution into a health opportunity  
 21 account.

22 Nothing in subparagraph (A) shall be construed as  
 23 preventing a State from providing for coverage of  
 24 preventive care (referred to in subsection (a)(3))

1 within the alternative benefits without regard to the  
2 annual deductible.

3 “(2) ANNUAL DEDUCTIBLE.—The amount of  
4 the annual deductible described in paragraph (1)(A)  
5 shall be at least 100 percent, but no more than 110  
6 percent, of the annualized amount of contributions  
7 to the health opportunity account under subsection  
8 (d)(2)(A)(i), determined without regard to any limi-  
9 tation described in subsection (d)(2)(C)(ii).

10 “(3) ACCESS TO NEGOTIATED PROVIDER PAY-  
11 MENT RATES.—

12 “(A) FEE-FOR-SERVICE ENROLLEES.—In  
13 the case of an individual who is participating in  
14 a State demonstration project and who is not  
15 enrolled with a medicaid managed care organi-  
16 zation, the State shall provide that the indi-  
17 vidual may obtain demonstration project med-  
18 icaid services from—

19 “(i) any participating provider under  
20 this title at the same payment rates that  
21 would be applicable to such services if the  
22 deductible described in paragraph (1)(A)  
23 was not applicable; or

24 “(ii) any provider at payment rates  
25 that do not exceed 125 percent of the pay-



1           ment rate that would be applicable to such  
2           services furnished by a participating pro-  
3           vider under this title if the deductible de-  
4           scribed in paragraph (1)(A) was not appli-  
5           cable.

6           “(B) TREATMENT UNDER MEDICAID MAN-  
7           AGED CARE PLANS.—In the case of an indi-  
8           vidual who is participating in a State dem-  
9           onstration project and is enrolled with a med-  
10          icaid managed care organization, the State shall  
11          enter into an arrangement with the organiza-  
12          tion under which the individual may obtain  
13          demonstration project medicaid services from  
14          any provider under such organization at pay-  
15          ment rates that do not exceed the payment rate  
16          that would be applicable to such services if the  
17          deductible described in paragraph (1)(A) was  
18          not applicable.

19          “(C) COMPUTATION.—The payment rates  
20          described in subparagraphs (A) and (B) shall  
21          be computed without regard to any cost-sharing  
22          that would be otherwise applicable under sec-  
23          tion 1916.

24          “(D) DEFINITIONS.—For purposes of this  
25          paragraph:

1           “(i) The term ‘demonstration project  
2           medicaid services’ means, with respect to  
3           an individual participating in a State dem-  
4           onstration project, services for which the  
5           individual would be provided medical as-  
6           sistance under this title but for the appli-  
7           cation of the deductible described in para-  
8           graph (1)(A).

9           “(ii) The term ‘participating provider’  
10          means—

11                   “(I) with respect to an individual  
12                   described in subparagraph (A), a  
13                   health care provider that has entered  
14                   into a participation agreement with  
15                   the State for the provision of services  
16                   to individuals entitled to benefits  
17                   under the State plan; or

18                   “(II) with respect to an indi-  
19                   vidual described in subparagraph (B)  
20                   who is enrolled in a medicaid man-  
21                   aged care organization, a health care  
22                   provider that has entered into an ar-  
23                   rangement for the provision of serv-  
24                   ices to enrollees of the organization  
25                   under this title.

1           “(4) NO EFFECT ON SUBSEQUENT BENEFITS.—  
 2       Except as provided under paragraphs (1) and (2),  
 3       alternative benefits for an eligible individual shall  
 4       consist of the benefits otherwise provided to the indi-  
 5       vidual, including cost-sharing relating to such bene-  
 6       fits.

7           “(5) OVERRIDING COST-SHARING AND COM-  
 8       PARABILITY REQUIREMENTS FOR ALTERNATIVE  
 9       BENEFITS.—The provisions of this title relating to  
 10      cost-sharing for benefits (including section 1916)  
 11      shall not apply with respect to benefits to which the  
 12      annual deductible under paragraph (1)(A) applies.  
 13      The provisions of section 1902(a)(10)(B) (relating  
 14      to comparability) shall not apply with respect to the  
 15      provision of alternative benefits (as described in this  
 16      subsection).

17          “(6) TREATMENT AS MEDICAL ASSISTANCE.—  
 18      Subject to subparagraphs (D) and (E) of subsection  
 19      (d)(2), payments for alternative benefits under this  
 20      section (including contributions into a health oppor-  
 21      tunity account) shall be treated as medical assist-  
 22      ance for purposes of section 1903(a).

23          “(7) USE OF TIERED DEDUCTIBLE AND COST-  
 24      SHARING.—

25          “(A) IN GENERAL.—A State—

1 “(i) may vary the amount of the an-  
 2 nual deductible applied under paragraph  
 3 (1)(A) based on the income of the family  
 4 involved so long as it does not favor fami-  
 5 lies with higher income over those with  
 6 lower income; and

7 “(ii) may vary the amount of the max-  
 8 imum out-of-pocket cost-sharing (as de-  
 9 fined in subparagraph (B)) based on the  
 10 income of the family involved so long as it  
 11 does not favor families with higher income  
 12 over those with lower income.

13 “(B) MAXIMUM OUT-OF-POCKET COST-  
 14 SHARING.—For purposes of subparagraph  
 15 (A)(ii), the term ‘maximum out-of-pocket cost-  
 16 sharing’ means, for an individual or family, the  
 17 amount by which the annual deductible level ap-  
 18 plied under paragraph (1)(A) to the individual  
 19 or family exceeds the balance in the health op-  
 20 portunity account for the individual or family.

21 “(8) CONTRIBUTIONS BY EMPLOYERS.—Noth-  
 22 ing in this section shall be construed as preventing  
 23 an employer from providing health benefits coverage  
 24 consisting of the coverage described in paragraph

1 (1)(A) to individuals who are provided alternative  
 2 benefits under this section.

3 “(d) HEALTH OPPORTUNITY ACCOUNT.—

4 “(1) IN GENERAL.—For purposes of this sec-  
 5 tion, the term ‘health opportunity account’ means an  
 6 account that meets the requirements of this sub-  
 7 section.

8 “(2) CONTRIBUTIONS.—

9 “(A) IN GENERAL.—No contribution may  
 10 be made into a health opportunity account ex-  
 11 cept—

12 “(i) contributions by the State under  
 13 this title; and

14 “(ii) contributions by other persons  
 15 and entities, such as charitable organiza-  
 16 tions.

17 “(B) STATE CONTRIBUTION.—A State  
 18 shall specify the contribution amount that shall  
 19 be deposited under subparagraph (A)(i) into a  
 20 health opportunity account.

21 “(C) LIMITATION ON ANNUAL STATE CON-  
 22 TRIBUTION PROVIDED AND PERMITTING IMPO-  
 23 SITION OF MAXIMUM ACCOUNT BALANCE.—

24 “(i) IN GENERAL.—A State—

1 “(I) may impose limitations on  
2 the maximum contributions that may  
3 be deposited under subparagraph  
4 (A)(i) into a health opportunity ac-  
5 count in a year;

6 “(II) may limit contributions into  
7 such an account once the balance in  
8 the account reaches a level specified  
9 by the State; and

10 “(III) subject to clauses (ii) and  
11 (iii) and subparagraph (D)(i), may  
12 not provide contributions described in  
13 subparagraph (A)(i) to a health op-  
14 portunity account on behalf of an in-  
15 dividual or family to the extent the  
16 amount of such contributions (includ-  
17 ing both State and Federal shares)  
18 exceeds, on an annual basis, \$2,500  
19 for each individual (or family mem-  
20 ber) who is an adult and \$1,000 for  
21 each individual (or family member)  
22 who is a child.

23 “(ii) INDEXING OF DOLLAR LIMITA-  
24 TIONS.—For each year after 2006, the dol-  
25 lar amounts specified in clause (i)(III)

1 shall be annually increased by the Sec-  
 2 retary by a percentage that reflects the an-  
 3 nual percentage increase in the medical  
 4 care component of the consumer price  
 5 index for all urban consumers.

6 “(iii) BUDGET NEUTRAL ADJUST-  
 7 MENT.—A State may provide for dollar  
 8 limitations in excess of those specified in  
 9 clause (i)(III) (as increased under clause  
 10 (ii)) for specified individuals if the State  
 11 provides assurances satisfactory to the Sec-  
 12 retary that contributions otherwise made  
 13 to other individuals will be reduced in a  
 14 manner so as to provide for aggregate con-  
 15 tributions that do not exceed the aggregate  
 16 contributions that would otherwise be per-  
 17 mitted under this subparagraph.

18 “(D) LIMITATIONS ON FEDERAL MATCH-  
 19 ING.—

20 “(i) STATE CONTRIBUTION.—A State  
 21 may contribute under subparagraph (A)(i)  
 22 amounts to a health opportunity account in  
 23 excess of the limitations provided under  
 24 subparagraph (C)(i)(III), but no Federal  
 25 financial participation shall be provided

1 under section 1903(a) with respect to con-  
2 tributions in excess of such limitations.

3 “(ii) NO FFP FOR PRIVATE CONTRIBU-  
4 TIONS.—No Federal financial participation  
5 shall be provided under section 1903(a)  
6 with respect to any contributions described  
7 in subparagraph (A)(ii) to a health oppor-  
8 tunity account.

9 “(E) APPLICATION OF DIFFERENT MATCH-  
10 ING RATES.—The Secretary shall provide a  
11 method under which, for expenditures made  
12 from a health opportunity account for medical  
13 care for which the Federal matching rate under  
14 section 1903(a) exceeds the Federal medical as-  
15 sistance percentage, a State may obtain pay-  
16 ment under such section at such higher match-  
17 ing rate for such expenditures.

18 “(3) USE.—

19 “(A) GENERAL USES.—

20 “(i) IN GENERAL.—Subject to the  
21 succeeding provisions of this paragraph,  
22 amounts in a health opportunity account  
23 may be used for payment of such health  
24 care expenditures as the State specifies.



1           “(ii) GENERAL LIMITATION.—In no  
 2 case shall such account be used for pay-  
 3 ment for health care expenditures that are  
 4 not payment of medical care (as defined by  
 5 section 213(d) of the Internal Revenue  
 6 Code of 1986).

7           “(iii) STATE RESTRICTIONS.—In ap-  
 8 plying clause (i), a State may restrict pay-  
 9 ment for—

10           “(I) providers of items and serv-  
 11 ices to providers that are licensed or  
 12 otherwise authorized under State law  
 13 to provide the item or service and may  
 14 deny payment for such a provider on  
 15 the basis that the provider has been  
 16 found, whether with respect to this  
 17 title or any other health benefit pro-  
 18 gram, to have failed to meet quality  
 19 standards or to have committed one  
 20 or more acts of fraud or abuse; and

21           “(II) items and services insofar  
 22 as the State finds they are not medi-  
 23 cally appropriate or necessary.

24           “(iv) ELECTRONIC WITHDRAWALS.—  
 25 The State demonstration program shall

1 provide for a method whereby withdrawals  
 2 may be made from the account for such  
 3 purposes using an electronic system and  
 4 shall not permit withdrawals from the ac-  
 5 count in cash.

6 “(B) MAINTENANCE OF HEALTH OPPOR-  
 7 TUNITY ACCOUNT AFTER BECOMING INELI-  
 8 GIBLE FOR PUBLIC BENEFIT; 25 PERCENT SAV-  
 9 INGS TO GOVERNMENT.—

10 “(i) IN GENERAL.—Notwithstanding  
 11 any other provision of law, if an account  
 12 holder of a health opportunity account be-  
 13 comes ineligible for benefits under this title  
 14 because of an increase in income or as-  
 15 sets—

16 “(I) no additional contribution  
 17 shall be made into the account under  
 18 paragraph (2)(A)(i);

19 “(II) subject to clause (iii), the  
 20 balance in the account shall be re-  
 21 duced by 25 percent; and

22 “(III) subject to the succeeding  
 23 provisions of this subparagraph, the  
 24 account shall remain available to the  
 25 account holder for withdrawals under

1 the same terms and conditions as if  
 2 the account holder remained eligible  
 3 for such benefits.

4 “(ii) SPECIAL RULES.—Withdrawals  
 5 under this subparagraph from an ac-  
 6 count—

7 “(I) shall be available for the  
 8 purchase of health insurance coverage;  
 9 and

10 “(II) may, subject to clause (iv),  
 11 be made available (at the option of  
 12 the State) for such additional expendi-  
 13 tures (such as job training and tuition  
 14 expenses) specified by the State (and  
 15 approved by the Secretary) as the  
 16 State may specify.

17 “(iii) EXCEPTION FROM 25 PERCENT  
 18 SAVINGS TO GOVERNMENT FOR PRIVATE  
 19 CONTRIBUTIONS.—Clause (i)(II) shall not  
 20 apply to the portion of the account that is  
 21 attributable to contributions described in  
 22 paragraph (2)(A)(ii). For purposes of ac-  
 23 counting for such contributions, with-  
 24 drawals from a health opportunity account

1 shall first be attributed to contributions  
 2 described in paragraph (2)(A)(i).

3 “(iv) CONDITION FOR NON-HEALTH  
 4 WITHDRAWALS.—No withdrawal may be  
 5 made from an account under clause (ii)(II)  
 6 unless the accountholder has participated  
 7 in the program under this section for at  
 8 least 1 year.

9 “(v) NO REQUIREMENT FOR CONTINU-  
 10 ATION OF COVERAGE.—An account holder  
 11 of a health opportunity account, after be-  
 12 coming ineligible for medical assistance  
 13 under this title, is not required to purchase  
 14 high-deductible or other insurance as a  
 15 condition of maintaining or using the ac-  
 16 count.

17 “(4) ADMINISTRATION.—A State may coordi-  
 18 nate administration of health opportunity accounts  
 19 through the use of a third party administrator.

20 “(5) TREATMENT.—Amounts in, or contributed  
 21 to, a health opportunity account shall not be counted  
 22 as income or assets for purposes of determining eli-  
 23 gibility for benefits under this title.

24 “(6) UNAUTHORIZED WITHDRAWALS.—A State  
 25 may establish procedures—

1           “(A) to penalize or remove an individual  
2           from the health opportunity account based on  
3           nonqualified withdrawals by the individual from  
4           such an account; and  
5           “(B) to recoup costs that derive from such  
6           nonqualified withdrawals.”.

○